

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JAVIER FERNANDEZ,)
Petitioner,)
vs.) No. 1:13-cv-930-SEB-DKL
UNITED STATES OF AMERICA) No. 1:10-cr-00167-SEB-KPF-2

**Entry Denying Motion for Relief Pursuant to
28 U.S.C. § 2255 and Denying Certificate of Appealability**

The United States abided by its obligations set forth in the plea agreement resolving charges Javier Fernandez faced in No. 1:10-cr-00167-SEB-KPF-2. It is time that Fernandez does likewise. Specifically, Fernandez has not advanced any reason why the waiver provision of the plea agreement should not be understood as barring this action for relief pursuant to 28 U.S.C. § 2255. Based on the pleadings and the underlying record, the waiver provision prevents Fernandez from bringing this action. There are limited circumstances under which such a provision is not enforceable, as was discussed in *Keller v. United States*, 657 F.3d 675, 681 (7th Cir. 2011), for example, but those circumstances are not present here.

Based on the foregoing, therefore, Fernandez's motion for relief pursuant to 28 U.S.C. § 2255 is **denied**. Judgment consistent with this Entry shall now issue.

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the *Rules Governing 2255 Proceedings*, and 28 U.S.C. § 2253(c), the court finds that Fernandez has failed to show that reasonable jurists would find it “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 04/25/2014



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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